STATE OF MICHIGAN

COURT OF APPEALS

DAVID P. MCGUIRE, GLORIA V. MCGUIRE, RONALD RUSHFORD, LORRAYNE A. RUSHFORD, and ANDREW PASTERZ,

Plaintiffs-Appellees,

v

ERIC SMITH,

Defendant-Appellant,

and

WILLIAM QUINN, NORA QUINN, and DOUGLAS J. SHAW,

Defendants.

UNPUBLISHED
March 10, 2005

No. 251041
Mackinac Circuit Court
LC No. 01-005399-CH

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Defendant Eric Smith appeals as of right the trial court's order quieting title to a disputed portion of land in favor of plaintiffs on a theory of acquiescence.[1] We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

This action concerns the east/west property line of the parties' adjoining properties. Plaintiffs McGuire, Rushford, and Pasterz own three properties on the eastern side, and defendants owned the properties on the western side. A fence line runs through the properties owned by defendants Quinn and Smith approximately 200 feet west of the surveyed boundary line. Plaintiffs McGuire and Rushford purchased their respective properties in December 1986 and plaintiff Pasterz purchased his property in 1992. The Quinns bought their property, across which the disputed fence line runs, in July 1987. Quinn and his wife quitclaimed the southern

[1] Although only defendant Smith has appealed, pursuant to this Court's order of April 12, 2004, the property owned by the Quinn defendants at the time of trial is within the scope of this appeal.

portion of the property to their son and, in 1999, defendants Smith and Shaw purchased that property from Quinn's son.

In approximately 1990, Quinn introduced himself to Rushford, and they discussed the boundary between their properties being the fence line. However, in 1998, Quinn received a letter from the county equalization department indicating that the acreage amounts were larger than the amounts that he believed he had purchased. This prompted Quinn to order a survey, which revealed that the fence line was actually two hundred feet west of the surveyed boundary line. McGuire, Rushford, and Pasterz sued to quiet title, claiming that they had acquired the property to the east of the fence line pursuant to the theory of acquiescence. The trial court agreed, and defendants appealed the decision to this Court.

II. The Theory Of Acquiescence

A. Standard Of Review

We review de novo equitable actions while reviewing the findings of fact supporting the decision for clear error.[2]

B. Defendants' (And Their Predecessors') Acquiescence To The Fence Line

There are three theories of acquiescence to a boundary line,[3] but the pertinent theory in this case is acquiescence for the statutory period of fifteen years. In *Sackett*, this Court explained the rationale for this theory and its relationship to the statute of limitations,[4] as follows:

> The law of acquiescence is concerned with a specific application of the statute of limitations to cases of adjoining property owners who are mistaken about where the line between their property is. Adjoining property owners may treat a boundary line, typically a fence, as the property line. If the boundary line is not the recorded property line, this results in one property owner possessing what is actually the other property owner's land. Regardless of the innocent nature of this mistake, the property owner whose land is being possessed by another would have a cause of action against the other property owner to recover possession of the land. After fifteen years, the period for bringing an action would expire. The result is that the property owner of record would no longer be able to enforce his title, and the other property owner would have title by virtue of his possession of the land.[5]

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[2] *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210; 568 NW2d 378 (1997).

[3] See *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996),

[4] MCL 600.5801.

[5] *Sackett*, *supra*, at 681, quoting *Kipka v Fountain*, 198 Mich App 435, 438-439; 499 NW2d 363 (1993).

"A claim of acquiescence to a boundary line does not require that the possession be hostile or without permission."[6] Michigan law has not set forth specific elements to satisfy the doctrine of acquiescence.[7] Decisions "have merely inquired whether the evidence presented established that the parties *treated* a particular boundary line as the property line."[8] A party seeking to establish a property boundary by acquiescence may satisfy the requirement that the acquiescence has existed for fifteen years by tacking onto the acquiescence of predecessors in title.[9]

Smith argues that there was insufficient evidence to establish acquiescence for fifteen years because there was no evidence that the parties or their predecessors recognized or treated the fence as the boundary line. According to Smith, the trial court erroneously relied on the mere existence of a fence without requiring proof that the parties treated the fence as the boundary.

Contrary to Smith's argument, the trial court did not rely on the mere existence of a fence, and a review of the record indicates that the evidence supports the trial court's decision. There was ample evidence that defendants' predecessor, Blaney Park, treated the fence as the boundary line beyond the statutory period. In addition, although William Quinn indicated that he was unaware of the boundary of the property until 1999, the logger whom he hired before that time treated the fence as the boundary, and there was testimony that Quinn acknowledged that the fence was the boundary in a conversation with plaintiffs in 1990. Similarly, plaintiffs and their predecessors treated the fence as the property line. Pasterz treated the fence as the property line and built a deer blind nearby. The evidence also supported the inference that Pasterz' predecessor in interest treated the fence as the boundary by attaching an electric fence to it, apparently for the purpose of containing livestock.

Plaintiffs Rushford and McGuire also understood and treated the fence line as the property line, including by building a deer blind in the disputed area. It may also be inferred that their predecessor treated the fence as the property line from the fact that her agent told them that the fence was the western boundary. Just as in *Walters II*, where there was testimony concerning the belief in the community concerning the boundary line,[10] there was testimony in this case that it was common knowledge that the fence was the boundary of Blaney Park, defendants' predecessor in interest. Although there was no evidence of a pattern of mowing and building substantial improvements as in *Walters II*, the treatment of a fence line in wooded properties used primarily for hunting necessarily differs from the treatment of a fence line in a residential subdivision.

The principal cases cited by Smith are factually distinguishable. In *Hayward v Marker*,[11] the Court stated that the "difficulty" with the defendant's acquiescence argument was that "the

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[6] *Walters v Snyder*, 225 Mich App 219, 224; 570 NW2d 301 (1997) (*Walters I*).

[7] *Walters v Snyder*, 239 Mich App 453, 457; 608 NW2d 97 (2000) (*Walters II*).

[8] *Id*. at 458.

[9] *Jackson v Deemar*, 373 Mich 22, 26; 127 NW2d 856 (1964).

[10] *Walters II*, *supra*, at 459.

[11] *Hayward v Marker*, 334 Mich 659, 661; 55 NW2d 143 (1952).

recognition of and acquiescence in the wrong line for 15 years is only shown to have been on the part of defendant with no showing as relates to plaintiffs and their predecessors."[12] Here, there was evidence of acquiescence for more than fifteen years by the parties and their predecessors in interest. Smith also cites *Sheldon v Michigan Central Railroad Co*,[13] for the proposition that a party's placement of a fence on the inside of its border is not evidence of an abandonment of the portion outside the fence.[14] But *Sheldon* involved acquiescence following a dispute and agreement, a distinct theory that may be used where acquiescence falls short of the time required by the statute of limitations for gaining title by adverse possession.[15] In any event, the evidence here indicated that the fence was intended and treated as the perimeter of Blaney Park.

C. Defendants As Bona Fide Purchasers

Smith's attempt to characterize himself as a bona fide purchaser for value is unavailing. None of the cases Smith cites concerning good-faith purchasers for value involve the doctrine of acquiescence.[16] Furthermore, although Smith asserts that the fence could not be seen from a casual inspection of the property in 1987, Pasterz testified that he walked along the entire length of the fence before purchasing his parcel in 1992. According to Pasterz he fence was down in some spots, but he could follow the fence posts. In addition, Quinn's surveyor found the fence in 1999. At that time, some of the posts were still standing. The trial court correctly noted that if Quinn "walked out there and marked it at all, he would have come to the fence line as being the 40-acre parcel."

For these reasons, the trial court did not clearly err in finding that McGuire, Rushford, and Pasterz acquired the disputed portion of land on the eastern side of the fence pursuant to a theory of acquiescence for the statutory period of fifteen years.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen

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[12] *Id*.

[13] *Sheldon v Michigan Central Railroad Co*, 161 Mich 503; 126 NW 1056 (1910).

[14] *Id.* at 514.

[15] See *Pyne v Elliott*, 53 Mich App 419, 427; 220 NW2d 54 (1974).

[16] See *Kastle v Clemons*, 330 Mich 28; 46 NW2d 450 (1951) (possession of premises pursuant to an unrecorded lease); *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992) (unrecorded mortgage); *Schepke v Dept of Natural Resources*, 186 Mich App 532; 464 NW2d 713 (1990) (equitable estoppel not applicable because leases gave notice to purchaser).